

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

06-CR-6054L

v.

JAMES APPLEBERRY,

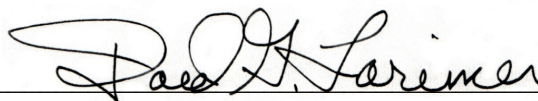
Defendant.

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On his guilty plea to Count II of the indictment, defendant was sentenced on July 24, 2007. By motion filed February 5, 2009, defendant seeks to vacate the Judgment pursuant to 28 U.S.C. § 2255 (Dkt. #35). Defendant contends that the crime to which he pleaded was a misdemeanor and not a felony. By letter dated February 18, 2009, the Government agrees and has no objection to the motion.

Therefore, the Court hereby vacates the prior Judgment (Dkt. #33) entered on July 24, 2007. The Court will issue an Amended Judgment forthwith reducing the sentence to a term of twelve (12) months imprisonment, and one year term of supervised release. The conditions set forth in the original Judgment remain the same.

IT IS SO ORDERED.



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DAVID G. LARIMER

United States District Judge

Dated: Rochester, New York  
February 23, 2009.